

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SUSAN BETH DAHN,**

**Appellant,**

**v.**

**MARCUS DEWITT DAHN, A-1 ALARMS, INC. and FIRST COMMUNITY BANK,**  
**Respondents.**

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**DOCKET NUMBER WD71626  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**Date: June 30, 2011**

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Appeal from:  
Jackson County Circuit Court  
The Honorable Marco A. Roldan, Judge

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Appellate Judges:  
Division Three: Alok Ahuja, P.J., Victor C. Howard and Gary D. Witt, J.J.

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Attorneys:  
Patrick R. Miller, Overland Park, KS, for appellant.  
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Odessa, MO, and Gary Steinman, Gladstone, MO, for respondent.

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

**SUSAN BETH DAHN,**

**Appellant,**

**v.**

**MARCUS DEWITT DAHN, A-1 ALARMS, INC. and FIRST COMMUNITY BANK,**  
**Respondents.**

WD71626

Jackson County

Appellant Susan Dahn (“Wife”) and Respondent Marcus Dahn (“Husband”) were married from July 1, 1977 until the dissolution of their marriage on December 19, 2006. During their marriage Husband and Wife were the sole shareholders of Respondent A-1 Alarms, Inc., with Husband owning 65% of A-1’s stock and Wife the remaining 35%. Husband was President of A-1 and managed the business.

Between July 22, 2000 and January 17, 2003, Husband caused A-1 to issue twenty-three shareholder distribution checks made payable to Wife, totaling \$235,200. Husband executed each of the checks on A-1’s behalf. Although the checks were made payable solely to Wife, they were never delivered to her. Instead, Husband endorsed each check with Wife’s signature, and deposited them into personal accounts he maintained at Respondent First Community Bank.

Wife first learned of the allegedly misappropriated checks in 2006, during the parties’ dissolution proceedings. She conducted discovery concerning the checks during the dissolution, and amended her petition to seek restoration of the checks to her. Wife also added A-1 as a Respondent in the dissolution proceedings.

On the day the dissolution case was scheduled for trial, the parties announced that they had reached a settlement. The settlement was memorialized in a judgment which recited that the parties “had entered into an oral agreement on all issues.” The settlement awarded all of A-1’s stock to Husband, in exchange for a payment to Wife of \$600,000. Husband was also awarded the bank accounts into which the checks had been deposited.

Wife filed the current action in October 2007. She admits this lawsuit involves the same twenty-three A-1 shareholder distribution checks which had been the subject of discovery, and allegations of her amended petition, in the dissolution. Wife alleges claims for common law conversion, conversion under § 400.3-420, and breach of fiduciary duty against Husband; claims of negligence and breach of fiduciary duty against A-1; and for statutory conversion against the Bank. The trial court granted summary judgment to all defendants. Wife appeals.

## **AFFIRMED.**

Division Three holds:

Wife's claims against Husband and A-1 are barred by *res judicata*. Wife, Husband, and A-1 were all parties to the dissolution action. Wife asserted the same "claim" in the dissolution action that she seeks to assert here, in that Wife relies on the identical aggregate of operative facts giving rise to a right enforceable by a court. Wife was aware of the allegedly misappropriated distribution checks during the course of the dissolution proceedings, and the distribution checks were the subject of discovery, and allegations in Wife's operative pleading, in that earlier action. Even if the proceeds of the distribution checks could not have been located, the dissolution court was empowered to afford Wife relief by ordering Husband to reimburse her for the value of this misappropriated marital property, or by imputing the value of the absent funds to Husband in any property division. To the extent Wife desired relief beyond that available in dissolution, she was entitled to join her current tort claims, as separate causes of action, with her petition seeking dissolution of marriage.

While prior cases suggest that *res judicata* does not bar a post-dissolution claim by one spouse for the other spouse's tortious marital conduct resulting in personal injury, this case involves the alleged misappropriation of marital property, not personal injury. The division of marital property is one of the core functions of a dissolution court, and the court had the authority to grant Wife meaningful relief for any misappropriation. Further, the legislature has expressly declared that the provisions of a dissolution decree effecting the distribution of marital property shall be final and non-modifiable in all cases. *See* §§ 452.330.5, § 452.360.2, RSMo. These statutory provisions reflect a legislative determination that issues concerning the division of marital property be fully and finally resolved in the dissolution proceeding itself. Application of *res judicata* is warranted here.

Wife's claim for conversion under § 400.3-420 against Bank is barred because Wife never received delivery of the checks. Although Wife argues that Husband received the checks as her agent with apparent authority, he was the President of the checks' issuer, A-1. According to Wife's petition, Husband caused the checks to be issued, without her knowledge, with the malicious intent to wrongfully deprive her of them. Based on these allegations, A-1 could not have believed Husband had apparent authority to act on Wife's behalf at the time the checks were delivered to him, defeating any claim of apparent authority.

Before: Division Three: Alok Ahuja, P.J., Victor C. Howard and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge

**June 30, 2011**

<b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b>
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